

PE-BERKELEY, INC.
67 Park Place East, 4th Floor
Morristown, NJ 07960

September 27, 2011

Clerk of the Board
California Air Resources Board ("CARB")
1001 "I" Street
Sacramento, CA 95814

**Subject: Comments of PE-Berkeley, Inc. on the 2nd 15 day Amendment
to the Proposed Modified Cap-and-Trade Regulation**

Dear Executive Officer Goldstene:

These comments are offered on behalf of PE-Berkeley, Inc ("PEB") a 22.47 MW cogeneration plant located in Berkeley, CA and Olympus Power, LLC, an independent power company which is both an equity investor in, and the Asset Manager of, this cogeneration facility. PEB supplies electric power to PG&E and thermal energy to University of California-Berkeley ("UC-B"). PEB operates its facility pursuant to the terms of energy supply agreements that were executed in 1987 and could not possibly have contemplated the application of any form of green house gas tax or regulation.

- 1) PEB incorporates by reference and reiterates its previous comments to the 1st 15 day Amendment that were submitted by PEB and received by CARB on August 11, 2011. PEB strongly believes that those comments reflect the unique posture of PEB as a stranded cogeneration facility and merit immediate consideration. PEB looks forward to the CARB's attention to those concerns as the project anticipates that the current regulations pose a potentially adverse impact upon PEB's long-term financial viability and, in turn, UC-B's access to reliable thermal energy.
- 2) PEB notes that in the 2nd 15 day Amendment to the California Cap on Greenhouse Emissions and Market-based Compliance Mechanisms, CARB has selectively encompassed all facilities under NAISC code 92811 and has given them an additional year of compliance exemption.(see 95852.2 (c)).

While this additional exemption is narrow in its current focus, it is our hope that it could provide CARB with a basis to offer a similar exemption to PEB through the expiration of PEB's energy supply agreement with UC-B in 2017, at which point PEB will be free to negotiate a cost recovery mechanism with its thermal customer.

A CHP facility such as PEB represents a class of generation assets that merit "appropriate incentives" as outlined in California Cap and Trade Program Resolution 10-42, yet PEB is clearly stranded under the currently proposed modified Cap-and-Trade regulations and lacks a cost recovery or pass-through mechanism tied to the end user of the thermal energy that it generates, as contemplated by AB-32 and by the clear intent of the public policy that underlies this program.

A decision by CARB to decline to address this difficult issue facing PEB would only further the inequitable result embodied in the current regulations, which acknowledge certain gaps in the regulations with respect to select affected parties, yet fail to address the real needs of a similarly situated facility.

PEB is proud of its record as a responsible environmental steward and looks forward to working with the CARB to refine the proposed cap and trade regulations to underscore California's need for efficient cogeneration technology as a critical part of any long term solution to the challenge of limiting man made greenhouse gas emissions.

Regards,



Michael Mazowita
Vice President
P.E. Berkeley, Inc.



Sean P. Lane
General Counsel and Secretary
Olympus Power, LLC

cc:

Michael R. Barr, Esq., Project Counsel & Environmental Counsel to P.E.
Berkeley, Inc.

Peter H. Weiner, Esq., Environmental Counsel to Olympus Power, LLC